REMARKS

Reconsideration of the present application is respectfully requested.

Applicant thanks the Examiner for the indication in the Office Action of 23 March 2009 that claims 2 and 6 would be allowable if rewritten to overcome the rejection under §112, second paragraph, and further to include all limitations of the base claim.

Applicant has amended claim 1 to include all elements of claim 2. Claim 2 has been cancelled. For this reason, claims 1 and 3-21 are in condition for allowance.

Applicant has added new claims 60-69 which correspond to originally presented claims 1-5 and 7-21. Claim 60 includes all elements of claims 1 and 6 as originally filed. Therefore, claims 60-69 are also in condition for allowance.

Applicant has also added new claims 70-106 which correspond to various originally presented claims. These claims will be discussed in the comments that follow.

The rejections under 35 U.S.C. §112, second paragraph.

Claim 1 was rejected for failing to particularly point out and distinctly claim the subject matter regarded as the invention.

Applicant has amended claim 1 (and also newly added claim 60) to change the word “or” to the word “of.” Applicant has also made this change in the newly presented independent claims. With this change, Applicant respectfully requests withdrawal of the rejection under §112,

Applicant thanks the Examiner for noting Applicant’s error, providing the proper interpretation, and continuing with examination.

Disqualification of U.S.6,315,210 as prior art.

Some of the rejections discussed below are based on a combination of Bendall with U.S. Patent 6,315,210 to Kline. The '210 patent does not quality as prior art under 35. USC § 102(b).

A reference qualifies under §102(b) if the publication or issue date of the reference is more than one year prior to the effective filing date of the application. MPEP §706.02. The issue date of the '210 patent to Kline is November 13, 2001. The '210 patent to Kline was not published as an application.

An application that properly claims benefit under 35 U.S.C. §119(e) to a provisional application has an effective filing date the same as the filing date of the provisional application. The current application claims priority to U.S. Provisional Patent Application 60/314,803, filed August 24, 2001. Therefore, the present application has an effective filing date of August 24, 2001.

The '210 patent to Kline does not qualify as prior art under §102(b) because it does not have a publication or issue date that is more than one year prior to the effective filing date of the current application. To the contrary, the issue date of the '210 patent is after the effective filing date of the current application.

Further, the '210 patent does not quality as prior art under 35 USC § 102(e) because the '210 application was not "by another." The inventor of the '210 patent, Kevin B. Kline, is the same as the inventor of the current application, Kevin B. Kline.

Further, the '210 application is not available as prior art under 35 USC § 102(a). As stated in MPEP § 706.02(a), "[f]or 35 USC 102(a) to apply, the reference must have a

publication date earlier in time than the effective date of the application, and must not be the Applicant's own work. As stated above, the inventor of the '210 patent is the same as the inventor of the currently pending application.

Further, the undersigned states that both the '210 patent and the currently pending application are owned by MAGARL, LLC:

(1) U.S. Patent 6,315,210 is owned by MAGARL, LLC, as recorded on reel 015592, Frame 0329.

(2) U.S. Patent Application Serial Number 10/783,502 is assigned to MARGARL, LLC, as shown on reel 015590, Frame 0924.

It is possible that the USPTO will require a Terminal Disclaimer in this case. The undersigned will submit a Terminal Disclaimer if so required.

The rejections under 35 U.S.C. §102.

Claims 1, 3, 7, 8, and 17 were rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 4,607,788 to Bendall.

Applicant has amended claim 1 to include the elements of claim 2. For this reason, newly amended claim 1 is allowable, as are all claims dependent upon claim 1. Applicant respectfully requests withdrawal of the rejection of these claims.

Applicant has prepared new independent claim 60 that includes all elements of claim 1 and claim 6. For this reason, claim 60 is allowable, as are all claims dependent upon claim 60.

The rejections under 35 U.S.C §103.

Claims 4, 5, and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bendall et al. in view of U.S. Patent No. 3,938,741 to Allison.

Applicant has amended claim 1 to include the elements of claim 2, and is therefore allowable. Claims 4, 5, and 9 each depend upon claim 1, and are allowable for at least that reason. Applicant respectfully requests withdrawal of these rejections.

Claims 10-16 and 18-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bendall et al. in view of U.S. Patent No. 6,315,210 to Kline.

This rejection is based on a combination of two patents. The second U.S. Patent, U.S. 6,315,210 is not properly citable in a rejection because the '210 patent is not prior art under 35 U.S.C. § 102(a), 102(b), or 102(e). Further, the claimed inventions of the current application and the inventions of the '210 patent are owned by the same party. Applicant agrees to provide a terminal disclaimer in accordance with § 1.321(c) if required for allowance of claims.

For these reasons, the '210 patent to Kline has been removed as a reference, and therefore a prima facie case of obviousness has not been established.

Applicant has prepared new independent claim 70, which includes all elements of claims 10, 7, and 1. Since a prima facie case of obviousness was not established against claim 10, new independent claim 70 is therefore allowable, as are all claims dependent upon claim 70.

Applicant has prepared new independent claim 79 that includes all elements of claims 12 and 1. Since a prima facie case of obviousness was not established against claim 12, new independent claim 79 is therefore allowable, as are all claims dependent upon claim 79.

Applicant has prepared new independent claim 90 that includes all elements of claims 18 and 1. Since a prima facie case of obviousness was not established against claim 18, new independent claim 90 is therefore allowable, as are all claims dependent upon claim 90.

Applicant has prepared new independent claim 97 that includes all elements of claims 19 and 1. Since a prima facie case of obviousness was not established against claim 19, new independent claim 97 is therefore allowable, as are all claims dependent upon claim 97.

Claim 21 was rejected under 35 U.S.C. §103(a) as being unpatentable over Bendall et al. in view of U.S. Patent No. 5,033,671 to Shiba et al.

Applicant has amended claim 1 to include the elements of claim 2, and is therefore allowable. Claim 21 is allowable at least by being dependent upon an allowable independent claim.

Newly presented claims.

This sections summarizes in tabular form the statements previously made. The following table provides the number of a newly presented independent claim, the

previously presented claims that it includes, and the new dependent claims that depend upon the newly presented independent claim.

NEW INDEPENDENT CLAIM	COMBINES THE FOLLOWING ORIGINAL CLAIMS	NEW DEPENDENT CLAIMS
1	1 + 2	none
60	1 + 6	61-69
70	1 + 7 + 10	71-78
79	1 + 12	80-89
90	1 + 18	91-96
97	1 + 19.	98-106

Applicant respectfully requests entry of these newly filed claims. None of these claims present new matter.

CLOSING

Applicant has cancelled claims 2 and 22-59, amended claims 1 and 3, and added claims 60-106. Applicant respectfully requests issuance of a Notice of Allowance for pending claims 1, 3-21, and 60-106.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede any basis for rejections or objections in the Office Action. For those rejections based upon a combination of references and/or modification of references, there is no admission that the cited combinations are legally permitted, properly motivated, operable, or modifiable. Further, with regards to the various statements made in the Office Action concerning any prior art, the teachings of any prior art are to be interpreted under the law. Applicants make no admissions as to any prior art. The remarks herein are provided simply to overcome the rejections and objections made in the Office Action in an expedient fashion.

The undersigned welcomes a telephonic interview with the Examiner if the Examiner believes that such an interview would facilitate resolution of any outstanding issues.

Respectfully submitted,

By /John V. Daniluck/

John V. Daniluck, Reg. No. 40581
Bingham McHale, LLP
10 West Market Street, Suite 2700
Indianapolis, Indiana 46204
(317) 635-8900 telephone
(317) 236-9907 facsimile